

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2017

CORAM

THE HONOURABLE MR.JUSTICE T. RAJA

W.P. Nos. 5779 & 5780 of 2017

&

W.M.P. Nos. 6180 & 6181 of 2017

Shri R. Rajesh Kumar ... Petitioner in both WPs

Vs.

The Executive Director,
Food Corporation of India,
Zonal Office (South),
No.3, Haddows Road,
Chennai - 600 006. Respondent in both WPs

Prayer in W.P. No. 5779 of 2017: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus to direct the respondent to include the petitioner's name in the list of candidates who appeared in group discussion/interview and who were found to be eligible in terms of advertisement No.4/2015-FCI MT and Manager (Hindi) dated 30.05.2015.

Prayer in W.P. No. 5780 of 2017: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus to direct the respondent to accept the "No Objection Certificate" issued by the petitioner's Department on 17.07.2015 read with the corrigendum issued on 26.09.2016 issued by the Assistant General Manager (Personnel) for the Deputy General Manager (Region), FCI, Regional Office, Raipur, Chattisgarh and consider the same to have been in petitioner's possession as on 02.07.2015 and direct the respondent to declare and disclose the written test marks, group discussion marks and interview marks of the petitioner and if found eligible to select him to the post of Manager Trainee (Technical (E), South Zone.

For Petitioner :: Mr.Hari Radhakrishnan

For Respondent :: Mr.Kalyan Jhabakh
for M/s. Surana & Surana

O R D E R

W.P. No. 5779 of 2017 is filed for issue of a Writ of Mandamus to direct the respondent to include the petitioner's name in the list of candidates who appeared in group discussion/interview and who were found to be eligible in terms of advertisement No.4/2015-FCI MT and Manager (Hindi) dated 30.05.2015 and W.P. No. 5780 of 2017 is filed for issue of a Writ of Mandamus to direct the respondent to accept the "No Objection Certificate" issued by the petitioner's Department on 17.07.2015 read with the corrigendum issued on 26.09.2016 issued by the Assistant General Manager (Personnel) for the Deputy General Manager (Region), FCI, Regional Office, Raipur, Chattisgarh and consider the same to have been in petitioner's possession as on 02.07.2015 and direct the respondent to declare and disclose the written test marks, group discussion marks and interview marks of the petitioner and if found eligible, to select him to the post of Manager Trainee (Technical (E), South Zone.

2. The case of the petitioner is as hereunder:

(a) The petitioner is presently working as Assistant, Grade II (Technical) and currently posted at Food Corporation of India, SWC, Jagtara, Chattisgarh. The respondent Corporation had published an advertisement bearing No. 4/2015 for direct recruitment to the post of Management Trainee (MT) and Manager (Hindi) on 30.05.2015. Pursuant to the said advertisement, the petitioner had submitted an online application on 22.06.2015, thereafter which, the petitioner was called for a written examination on 25.10.2015. Subsequently, the petitioner was also called by the respondent Corporation to attend a Group Discussion and Personal Interview on 04.10.2016 and prior to the same, the documents submitted by the petitioner were to be verified by the officials concerned of the respondent Corporation. Accordingly, the documents were verified and according to the petitioner, after being satisfied about his eligibility, he was permitted to participate in the Group Discussion and Interview and the petitioner had also attended the same.

(b) The petitioner further states that as per the General Instructions forming part of the advertisement published by the respondent Corporation, the employees of Central/State Government/Public Sector Undertakings and Departmental candidates have to be in possession of "No Objection Certificate" issued from their employer on or before the closing date i.e., 02.07.2015. Accordingly, the petitioner submitted a letter dated 19.06.2015 through the District Office, Durg, FCI

to the General Manager (Region) Regional Office, FCI, Raipur, Chattisgarh, the Regional Head, who is entitled to issue "No Objection Certificate". On receipt of the petitioner's representation, for issue of "No Objection Certificate", the Regional Office at Raipur, considered the same and issued an office order dated 26.08.2015 permitting him to appear for the examination/interview, which was called for by the FCI, South Zonal Office, vide advertisement No.4/2015. In terms of the above mentioned office order, the Assistant General Manager (Personnel) issued a "No Objection Certificate" dated 17.07.2015.

(c) The petitioner further avers that as the "No Objection Certificate" was required to be issued and kept in possession as on 02.07.2015, the petitioner submitted a representation to the General Manager (Region), Raipur, for issuing the certificate with retrospective effect. Accordingly, the Regional Office issued a corrigendum dated 26.09.2016 clearly stating that though the request for issuance of "No Objection Certificate" was submitted by the petitioner, as early as on 19.06.2015, due to administrative delay, it could not be issued within the specified time and therefore, gave retrospective effect to the "No Objection Certificate" dated 17.07.2015. When the petitioner was called for verification of documents and for Group Discussion, he had produced the "No Objection Certificate" dated 17.07.2015 along with the corrigendum dated 26.09.2016, which gave retrospective effect to the "No Objection Certificate". The same was accepted by the officer, who verified the documents and the petitioner was also, thereafter, permitted to attend the Group Discussion and Personal Interview.

(d) However, the petitioner was taken aback when he found that his name was not included in the list of eligible candidates, published by the respondent Corporation in their website on 07.01.2017, from and out of the candidates, who had appeared for Group Discussion and Interview. Though the petitioner sent several reminders, there was no response. Thereupon, the petitioner sent applications dated 07.01.2017 and 19.01.2017 under the RTI Act, 2005 seeking details of marks secured by him and also the reason for non-inclusion of his name in the list of selected candidates. The respondent, vide letters dated 31.01.2017 and 03.02.2017, informed the petitioner that while the recruitment process is in progress, the information sought by him cannot be disclosed. Aggrieved by the said reply, the petitioner preferred an appeal to the Appellate Authority under the RTI Act, 2005, on 16.02.2017 and when he enquired the Deputy General Manager (Personnel), South Zone, Chennai, on 19.01.2017 about the reason for his non-inclusion, he was orally informed that as he was not in possession of "No Objection Certificate" as on 02.07.2015, his candidature was not

considered. Hence, the petitioner has come forward with the present writ petitions for the aforesaid reliefs.

3. The respondent has filed a detailed counter affidavit wherein it is stated as follows:

The petitioner, while submitting his online application for the post of Management Trainee (MT) on 22.06.2015, had to give a declaration that he was in possession of "No Objection Certificate" from his employer, which would be required to be sent along with other essential enclosures, in case of any shortlisting, on the basis of the written test and the petitioner had also given such a declaration that he was in possession of the said certificate, even on the date of filing the online application. However, at the time of document verification, the petitioner produced a "No Objection Certificate" dated 17.07.2015 issued by Regional Office, FCI, Raipur and also produced a letter dated 26.09.2016 by the Regional Officer, FCI, Raipur, stating that "No Objection Certificate" dated 17.07.2015 may be treated as having been issued on 02.07.2015. Hence, according to the respondent, on account of failure of the petitioner to produce the "No Objection Certificate" in accordance with his declaration in his Online Application and the said certificate having not been issued on or before 02.07.2015, being the date of closure of Online Applications Registration, the petitioner's candidature was rightly rejected. The corrigendum dated 26.09.2016 issued by Regional Office, Raipur, Chhattisgarh, stating that the "No Objection Certificate" dated 17.07.2015, should be treated as if it was issued on 02.07.2015, cannot be accepted for the reason that the petitioner had given a false declaration with regard to the possession of "No Objection Certificate" on the date of submitting his application online. Besides, there is no reason mentioned by the petitioner, whatsoever, for the issuance of corrigendum by the officer concerned, after more than 11 months from the date of issuance of "No Objection Certificate". Further, it is stated that as per point No.23 of the General Instructions forming part of the notification issued by the respondent, in Advt. No. 4/2015, calling for applications for direct recruitment to the post of Management Trainee (MT) and Manager (Hindi) on 30.05.2015, "Qualifying in the Written Test, Group Discussion and Interview for any post without fulfillment of eligibility conditions will not confer any claim to the candidate for final selection for the post" and point No.31 states that, "Issue of Admit Card for the Written Test & Calling for Interview and Group Discussion does not confer any right of acceptance of candidature and should not be construed as an acknowledgement of fulfilling the eligibility criteria for the post and it does not give an indefeasible right to an individual for employment with FCI." With regard to the contention of the

petitioner that there was no response to the e-mails and reminders sent by him requesting the reason for non-inclusion of his name in the list of eligible candidates, it is stated by the respondent that Point No. 26 of the General Instructions of the aforesaid advertisement clearly states that no correspondence would be entertained about the outcome of the application at any stage and at the time of RTI applications dated 07.01.2017 and 19.01.2017, submitted by the petitioner, the final selection/issue of offer of acceptance letter was underway and hence, the respondent had not disclosed any information sought by the petitioner. Moreover, the entire recruitment process has already been completed and offer of appointments have also been issued. According to the respondent, the petitioner, who has misrepresented about possession of "No Objection Certificate" and has given a false declaration, is not entitled to the reliefs sought.

4. Learned counsel for the petitioner would submit that the petitioner cannot be made to bear the brunt, owing to the administrative delay, on the part of the Department, in issuing the "No Objection Certificate", though the application, for issuance of the same, had been made on 19.06.2015, well before, the closing date i.e 02.07.2015. Further, the learned counsel would submit that in any event, when a corrigendum has been issued by the officer concerned, that the "No Objection Certificate" dated 17.07.2015 should be treated, as having been issued on 02.07.2015, the rejection of petitioner's candidature, for no fault of his, is unwarranted. It is also his submission that one of the conditions forming part of the advertisement states that for in-service candidates, the last date for submission of "No Objection Certificate" is 25.10.2015. Therefore, in all respects, the candidature of the petitioner should not have been rejected, as the petitioner is a Departmental Candidate.

5. Heard the learned counsel for the respondent, who would reiterate the contentions, set forth in the counter affidavit and submit that the petitioner is not entitled to the reliefs sought.

6. When the writ petitions came up on 05.06.2017, this Court directed the respondent to produce the relevant documents showing the marks secured by the petitioner, both in the written test and interview as well as the marks secured by the last candidate in the selection list and the marks secured by the first candidate in the waiting list and posted the matters to today.

7. Accordingly, today, when the matters are taken up, in a sealed cover, the details sought by this Court, earlier, by order dated 05.06.2017, have been furnished. A perusal of the same would disclose that the petitioner, who comes under the category "OBC" has secured total marks of 49.33, which includes the marks obtained by him in Written Test Weighted marks out of 70, Group Discussion and Interview while the last candidate in the select list, under the category "OBC", namely, Mukesh Kumar Saini, has secured a total of 49.46 marks and the first candidate in the waiting list, under "OBC" category, namely, KVS Bhakthavatsalam, has secured an aggregate of 49.42 marks, more than what has been secured by the petitioner. The next candidate, who belongs to "OBC" category, in the waiting list, is one Chetri Ramesh, who has secured the same marks in the written test like the petitioner. However, in this regard, it is submitted, on behalf of the respondent, that in case, the marks obtained by two candidates, in the written test, in a particular post, is one and the same, then the marks obtained by them in the interview would be taken into consideration, for the purpose of selection and that has been followed in the case of one Chetri Ramesh, who has secured more marks in the interview than the petitioner.

8. Referring to Clause 8 under the caption "General Information/Instructions" of the advertisement which reads as under:

"Employees of the Central/State Govt./Public Sector Undertakings and departmental candidates should apply online. Their candidature is subject to fulfilment of the essential eligibility criteria and ensure that they are in possession of No Objection Certificate from their employer on or before the closing date which shall be required to be sent / uploaded along with other essential enclosures in case of their shortlisting on the basis of the written test at the designated address/website which shall be informed/notified through the designated website (www.fcijobsportal.com)."

the learned counsel for the respondent submitted that the employees of the Central Government, State Government, Public Sector Undertakings and also departmental candidates should apply online, however, their candidature is subject to fulfillment of the essential eligibility criteria and they should also possess "No Objection Certificate" from their employer on or before the closing date which shall be required to be sent / uploaded along with other essential enclosures in case of their shortlisting on the basis of the written test at

the designated address / website which shall be informed / notified through the designated website. At this stage, it was contended that the petitioner was in possession of "No Objection Certificate" only on 02.07.2015.

9. However, the learned counsel for the petitioner, drawing the attention of this Court to Clause 36 of the General Instructions, submitted that the Clause 8 is meant exclusively for departmental candidates saying that their candidature is subject to possession of "No Objection Certificate" from their employer which shall be required to be sent / uploaded along with other essential enclosures in case of their shortlisting on the basis of written examination held on 25.10.2015 at the designated address and therefore, for the departmental candidates, the date of submission of NOC is only 25.10.2015 and hence, the respondents cannot take a different stand.

10. This Court finds substance in the submission of the learned counsel for the petitioner for the reason that the petitioner has submitted his application seeking "No Objection Certificate" on 19.06.2015, which is within time and therefore, the Department, realising the lapse committed by them, issued a Corrigendum dated 26.09.2016 stating that due to administrative reasons and exigencies, the required "No Objection Certificate" could be issued only on 17.07.2015 and that the "No Objection Certificate" issued on 17.07.2015 shall be treated to have been given retrospectively with effect from 02.07.2015. Further, a reading of Clause 36 of the advertisement also shows that for departmental candidates, the last date for submission of "No Objection Certificate" is only 25.10.2015.

11. In view of the foregoing reasons, this Court finds no fault on the part of the petitioner, either while applying for "No Objection Certificate" or while receiving the same as it was issued only on 17.07.2015. In any event, since the date of possession of "No Objection Certificate" for the departmental candidates has been fixed as 25.10.2015, which is the date of written examination, as per Clause 36, keeping in mind the fact that there are two vacancies and the petitioner is placed at Sl.No.3 of the waiting list, this Court directs the respondent to consider the case of the petitioner, if the candidates at Sl. Nos.1 and 2 have not joined duty. It is needless to mention that if there is any alteration in the waiting list of candidates, due to availability of any future vacancy, the respondent shall consider the case of the petitioner, in terms of his rank in the waiting list.

The writ petitions stand disposed of in the above terms.
Costs made easy. Connected W.M.Ps. are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

cad

To

The Executive Director,
Food Corporation of India,
Zonal Office (South),
No.3, Haddows Road,
Chennai - 600 006.

+4cc to M/S.Surana & Surana, Advocate Sr.40338, 40339, 43641 and
43642

+2cc to M/S.Hari Radhakrishnan, Advocate Sr.40393, 44102

Common order in
W.P. Nos. 5779 & 5780 of 2017

scd[co]
srg 18/07/2017

सत्यमेव जयते

WEB COPY